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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,284	08/20/2001	Gregory P. Fitzpatrick	BOC9-2001-0004 (239)	5720
40987	7590	11/30/2006	EXAMINER	
AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188			SMITH, TRACI L	
			ART UNIT	PAPER NUMBER
			3629	
DATE MAILED: 11/30/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/933,284

Applicant(s)

FITZPATRICK ET AL.

Examiner

Traci L. Casler

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-8,10-15,17-26,28-32,34-39 and 41-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 4-8, 10-15, 17-26, 28-32, 34-39, 41-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

This action is in response to papers filed on September 13, 2006.

Claims 1, 10, 17, 20, 25, 34, 41 and 44 have been amended.

Claims 49 and 50 have been added.

Claims 1-8, 10-15, 17-32, 34-39 and 41-50 have been rejected.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 13, 2006 has been entered.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

Art Unit: 3629

2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims **1-2, 4-8, 10-15, 17-26, 28-32, 34-39, 41-50** are rejected under 35 U.S.C. 103(a) as being obvious over US Patent 6,539,232; Method and System for Connecting mobile users based on degree of separation. Hendrey et al, in view of non-patent literature "Personal Area Networks: Near-field intrabody communication"; IBM Systems Journal; 1996 Zimmerman.
4. As to claims **1, 10, 17, 20, 25, 34, 41 and 44** Hendrey teaches:
- Receiving communication from one portable device to another(C.5 I. 8 & 28).
- Receiving a communication at a central station from a device
- identifying common contacts between users of two devices(C. 5 I. 40-50)
- establishing a communication between to the two devices identifying they have a common contact(C. 2 I. 53-54 C. 19 I. 60-63). Hendrey fails to explicitly teach actually sending a message via the established communication. However, it would have been obvious to one skill in the art at the time of invention to combine this limitation with Hendrey. Hendrey identifies the prior art telecommunication uses for sending messages to pagers(C. 1 I. 61-65) in which it would be obvious to send messages with the communications established my Hendrey's invention.

Hendrey fails to teach the providing an identifier that identifies the second user. However, Zimmerman teaches a sharing contact information to share information of two people(Pg. 8 Par. 1-2). It would have been obvious to one skilled in the art at the time of invention to combine Zimmerman

with Hendrey as Zimmerman states it increases the usefulness of sharing information by giving additional features not provided by other independent devices.

5. As to claims 2, 11-12, 26 and 35-36 Hendrey teaches identifying the two users in later correspondence(C. 10 l. 40-43 and 51)

6. As to claims 4-5 and 28-29Hendry teaches notification sent to devices telling user another user is identified with a common contact(C. 20 l. 1-5)

7. As to claims 6, 13, 18-19, 21-22, 30, 37, 42-43 and 45-46Hendrey teaches the identifier being visually displayed either in text, graphical form.(C. 4 l. 12-15).

8. As to claims 7-9, 14-16, 23-24, 3-33, 37-40 and 47-48 Hendrey teaches wireless communication using pagers, cell phones and wearable computers. The examiner notes that the wireless communication of infrared are inherent in the devices claimed by the prior art.

9. As to claims 40 Hendrey fails to teach the communication sent by computing device containing a VISUAL IDENTIFIER. However, it would have been obvious if a message is being sent that something is displayed to identify sender. Furthermore, the examiner notes the limitation of the device being worn by the user is merely intended use. Regardless of how the device is worn, help or attached to the user the device still functions in the same manner.

10. As to claim 50 Hendrey fails to teach the message with a symbol. However, Zimmerman teaches sending contact information Pg. 8 ¶ 12). It would have been obvious to combine Hendrey with Zimmerman for the symbol as a symbol can be

determined as a letter, number graphic etc. Therefore the limitation of the identifier is being a symbol is considered non-functional descriptive material. The steps of the method/process will be performed the same regardless of what type of information is being displayed and/or how the message is being displayed.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. Claims 3 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,539,232; Method and System for Connecting mobile users based on degree of separation. Hendrey et al.

14. As to claims 3 and 27 Hendrey teaches a method of identifying common contacts among mobile device users. However, Hendrey fails to teach identifying the common

contact in a communication to the users. It would have been obvious to one of ordinary skill in the art at the time of invention to identify to the users what the commonality is so the users are aware of how they are receiving this communication and it's safe to communicate back. Hendrey identifies the users setting the "degrees of separation" for which one qualifies to have information sent, there for user meeting a second user or receiving information would want to know how this person is connected to them. What type o relationship is there between them and the second user.

Response to Arguments

15. Applicant's arguments filed June 16, 2006 have been fully considered but they are not persuasive.

16. As to applicants arguments regarding the prior art not teaching the actually sending of a message via the communication established, this limitation has been addressed in the above noted rejections. The examiner notes applicants arguments that Hendrey has not intention of sending a message via the communication path which has been established is not persuasive. Examiner notes the purpose of having a communication network is to be able to send messages and/or transmit information from on location, person or device to another location, person or device. The actual sending of the message through to common contact communication network is the obvious next step.

17. As to applicants arguments regarding the prior art not sending identifying contact information between the devices. Zimmerman sends business card information, which

Art Unit: 3629

inherently contains information that identifies an individual. The type of information or the style presentation of the identifier does not patentably distinguish the instant application from the prior art of record.

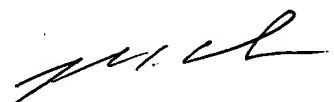
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Traci L. Casler whose telephone number is 571-272-6809. The examiner can normally be reached on Monday-Thursday 6:00 am-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TLC


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